

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

The amendments adopt a new rule 185—4.6(123), which establishes guidelines for class “C” beer permit holders to fill and sell beer in a container other than the original container, subject to and mandated by Iowa Code section 123.132, which was amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14, and pursuant to rules adopted by the Alcoholic Beverages Division. The amendments are necessary to:

- Establish filling and refilling requirements,
- Establish sealing requirements, and
- Establish restrictions for the filling, refilling and selling of beer in a container other than the original container.

The amendments also define three terms to provide clarity for the reader. One definition is added in new rule 185—4.6(123), while two definitions are added to rule 185—4.1(123) because the definitions are equally applicable to other retail permit holders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 2015, as **ARC 2255C**. A meeting to hear requested oral presentation, scheduled for December 18, 2015, was canceled with notice because no request for oral presentation was made. The Division received no written comments.

Upon further review of the amendments, the Division made a change to the amendments as published under Notice of Intended Action to clarify further the requirements associated with an original container. Specifically, a change was made to subrule 4.1(4) to clarify that an original container must be obtained in a lawful manner permissible under Iowa Code chapter 123, the administrative rules of the Alcoholic Beverages Division, and any other applicable federal and state laws, rules, and regulations. The Division also updated the references to the amending legislation in order to reflect that those changes are now codified in law.

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

The Alcoholic Beverages Commission adopted these amendments on January 12, 2016.

After analysis and review of the rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 123.

These amendments will become effective on March 9, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrules 4.1(3) and 4.1(4):

4.1(3) “*Growler*” means any fillable and sealable glass, ceramic, plastic, aluminum or stainless steel container designed to hold only beer or high alcoholic content beer.

4.1(4) “*Original container*” means a vessel containing an alcoholic beverage that has been lawfully obtained, bears a label approved by the Alcohol and Tobacco Tax and Trade Bureau, and has been securely capped, sealed or corked at the location of manufacture.

ITEM 2. Adopt the following **new** rule 185—4.6(123):

185—4.6(123) Filling and selling of beer in a container other than the original container by class “C” beer permit holders. Class “C” beer permit holders and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler as defined in subrule 4.1(3), subject to the requirements and restrictions provided in Iowa Code section 123.132 and in this rule.

4.6(1) Definition.

“Beer,” for the purpose of this rule, means “beer” as defined in Iowa Code section 123.3(7) and “high alcoholic content beer” as defined in Iowa Code section 123.3(19).

4.6(2) Sales criteria and restrictions. All sales made pursuant to this rule shall be made in person. Beer packaged and sold pursuant to this rule shall not be delivered or direct-shipped to consumers.

4.6(3) Filling and refilling requirements.

- a. A growler shall have the capacity to hold no more than 72 ounces.
- b. A growler shall be filled or refilled only by the permittee or the permittee’s employees who are 18 years of age or older.
- c. A growler shall be filled or refilled only on demand by a consumer at the time of the in-person sale.
- d. A growler shall be filled or refilled only with beer from the original container procured from a duly licensed wholesaler.
- e. A retailer may exchange a growler to be filled or refilled, provided the exchange occurs at the time of the in-person sale.
- f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

4.6(4) Sealing requirements. A filled or refilled growler shall be securely sealed at the time of the sale by the permittee or the permittee’s employees in the following manner:

- a. A growler shall bear a twist-type cap, screw-on cap, flip-top lid, swing-top lid, stopper, or plug.
- b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the twist-type cap, screw-on cap, flip-top lid, or swing-top lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler.
- c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.
- d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

4.6(5) Restrictions.

- a. Beer shall not be consumed on the premises of a class “C” beer permit holder.
- b. A growler shall not be filled in advance of a sale.
- c. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.
- d. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.
- e. A permittee or a permittee’s employees shall not allow a consumer to fill or refill a growler.
- f. The filling, refilling and selling of a growler shall be limited to the hours in which beer may be legally sold.
- g. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.
- h. An original container shall only be opened by the permittee or the permittee’s employees for the limited purpose of filling or refilling a growler as provided in this rule.

4.6(6) Violations. Failure to comply with the requirements and restrictions of this rule shall subject the permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.132.

[Filed 1/13/16, effective 3/9/16]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.